

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Zurab Kakushadze,)	
A46-132-266)	
Plaintiff,)	
)	07 Civ. 8338 (DCF)
)	
-against-)	ECF Case
)	
MICHAEL CHERTOFF, SECRETARY OF THE)	
DEPARTMENT OF HOMELAND SECURITY)	
)	
and)	
ROBERT MUELLER, DIRECTOR,)	
FEDERAL BUREAU OF INVESTIGATION)	
Defendants.)	

**MEMORANDUM OF LAW
IN OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS**

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I. The Defendants have not proposed any substantial jurisdictional issues in their Motion to Dismiss, which should therefore be denied.	2
II. There is no law or mandate, congressional or otherwise, that calls for the completion of a “name check” before a naturalization application can be completed.	5
III. USCIS has a duty to adjudicate this case, and allowing it to remain unadjudicated indefinitely is to fail in that duty.	8
IV. The APA imposes an independent duty on the Defendants to perform their nondiscretionary tasks in a timely fashion, with or without an explicit time frame specified within a specific law.	10
V. Mandamus is appropriate in the instant case; should the courts cease to grant mandamus in this and similar cases, USCIS and/or the FBI can keep a file open indefinitely, thus failing to perform their nondiscretionary duty without check.	14
VI. The courts have held that USCIS and the FBI have a non-discretionary duty to process an N-400 case in a timely manner.	15
VII. Mandamus has been granted in similar cases, establishing a precedent wherein the district court compels USCIS and the FBI to complete work within a reasonable amount of time – usually days.	17
VIII. The FBI has failed to perform its non-discretionary duty to process this background check in a timely fashion.	18
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